



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/161306

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 13, 2015, at Janesville, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mia Anderson-Inman

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County. During the time relevant here Petitioner's household was not an elderly, blind or disabled household as that term is used in the FoodShare program.

2. The agency sent Petitioner a Notice of FoodShare Overissuance dated December 14, 2014. It informed Petitioner that she had been overissued FoodShare in the amount of \$1684.00 for the months of July 2012 through March 2013.
3. The basis for this FoodShare overissuance claim was client error. Petitioner did not report to the agency that her household income had exceeded 130% of the Federal Poverty Level (FPL).
4. Petitioner's FoodShare household size is 3. The 200% (categorical eligibility), 130% (reporting required) and 100% (net income limit) of the Federal Poverty Level (FPL) amounts, respectively, for a group of 3 during the time involved here were (see *FoodShare Eligibility Handbook at §8.1.1*):
 - \$3090/\$2008/\$1545 from 10/1/11 to 9/30/12
 - \$3182/\$2069/\$1591 from 10/1/12 to 9/30/13
5. Petitioner's husband's employer submitted Employer Verification of Earnings Forms for the following dates that indicated the following estimates of earnings:
 - 01/09/12 – 42 hrs/wk @ \$12.00 [@4.3 wks/mo = \$2167]
 - 05/30/12 – 45 hrs/wk @ \$12.00 [@4.3 wks/mo = \$2322]
 - 01/11/13 - 45-50 hrs/wk @ \$12.00 [@4.3 wks/mo = up to \$2580]
6. Concerned because a State wage cross match showed more income than noted at Finding # 5, the agency sought actual wage information from the employer. That was provided and showed that between July 2012 and March 2013 Petitioner's husband never grossed less than \$2760 per month.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

As Petitioner's household was not is not an elderly, blind or disabled (EBD) household, the FoodShare Wisconsin Handbook (FSH) states that she had to report income at the point that household income exceeded 130% of the FPL:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Once a household passes the gross income test the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction, 7 *CFR* § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income (except as modified in overpayment calculations and as noted above), 7 *CFR* § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility allowance was a standard during the time involved here and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5). There is a cap on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.1 and 8.1.3.

It is apparent that Petitioner did have an obligation to report income in excess of 130% of the Federal Poverty level. In some months here that created a full overpayment as income was over 200% of the Federal Poverty Level and in some months a partial overpayment. Though she was unaware that the employer seems to have underreported income, the obligation to report is still there and that obligation is the responsibility of the benefit recipient.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was overissued FoodShare as alleged as income in excess of 130% of the Federal Poverty Level was not reported.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of February, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2015.

Walworth County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability